



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 1, 1998

Mr. Larry A. Baskind  
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300 E. Main, Suite 908  
El Paso, Texas 79901-1379

OR98-1368

Dear Mr. Baskind:

On behalf of the Socorro Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 115314.

The school district received a request for "[t]he number of worker's comp/sick/personal days off taken by [school district] employee Ronda Scrivner since September of 1996." In response to the request, you submitted to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the school district's assertion that "[s]ections 402.081 through 402.092, Texas Labor Code, generally provide for confidentiality of all information relating to worker's compensation claims." Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In conjunction with section 552.101, you assert that section 402.092 of the Labor Code establishes the confidentiality of the information at issue.

Section 402.092(b) provides that the "[Texas Workers' Compensation] Commission investigation files are not open records for purposes of Chapter 552, Government Code." "Investigative files" are defined in section 402.092(d) as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." The Labor Code provision, Subchapter E entitled "Records and Employee Information" contains provisions dealing with injury records, maintenance of injury information, confidentiality of injury information, as well as section 402.092 that you claim. See Lab. Code § 402.081.

It is the "School District's understanding that the confidentiality provisions of these sections relate to the employer, such as the School District, as well as to the Texas Workers' Compensation Commission." We disagree with the school district's argument for several reasons. The cited provisions within the statute only make reference to the Texas Workers' Compensation Commission [the "commission"]. Furthermore, although section 402.092 makes information confidential, it only refers to commission investigation files. In this instance, the requested information consists of the school district's personnel records, and it is not apparent and you have not explained whether the commission is investigating any aspect of the information at issue. We do not believe that sections 402.081-.092 are applicable in this instance. Therefore, you may not withhold any information under section 402.092 of the Labor Code.

Section 552.101 also applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

You raise the employees' common-law privacy rights by asserting that the information at issue is "a personnel record for which the staff member would have a reasonable expectation of confidentiality." Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public.<sup>1</sup> *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision No. 315 (1982) and authorities cited therein. None of the information you have submitted comports

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<sup>1</sup>Generally, employee privacy under section 552.102(a) is less broad than common-law privacy under section 552.101, because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977).

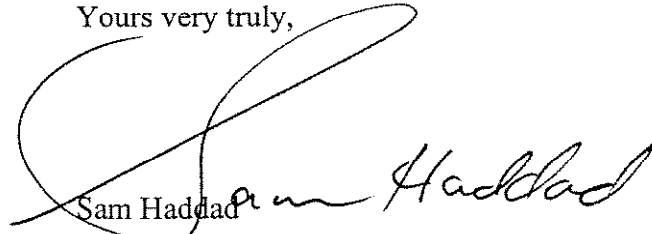
with this standard. Consequently, the school district may not withhold any portion of the employee records pursuant to sections 552.101 and 552.102. *See* Open Records Decision No. 336 (1982) (names of employees taking sick leave and dates thereof are not excepted by section 552.102).

This does not, however, end our discussion of these records. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.117 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Accordingly, you must redact the information subject to section 552.117 wherever it is located in the submitted records.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 115314

Enclosures: Submitted documents

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(w/o enclosures)